

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14783 of Christine Stelter and Terry Straub, pursuant to 11 DCMR 3107.2, for a variance from the prohibition against an accessory building exceeding one-story and 15 feet in height (Sub-section 2500.4) for the proposed construction of an accessory building for a garage, storage and work room in an R-4 District at premises 122 - 11th Street, S.E., (Square 989, Lot 39).

HEARING DATE: April 20, 1988
DECISION DATE: May 4, 1988

DISPOSITION: The Board DENIED the application by a vote of 4-0 (Charles R. Norris, Carrie L. Thornhill, William F. McIntosh and Paula L. Jewell to deny; Maybelle Taylor Bennett not present, not voting).

FINAL DATE OF ORDER: March 24, 1989

ORDER

The Board denied the application by its Order dated March 24, 1989. On April 5, 1989, the applicants submitted a timely motion for reconsideration or rehearing of the Board's decision on the application. In support of the motion for reconsideration, the applicants argue that the Board's Order does not state the factual basis for denial and is self-contradictory. The applicants argue that the proposal does not cause substantial detriment to the public good nor substantially impair the intent, purpose and integrity of the zone plan. The applicants further argue that because the Advisory Neighborhood Commission (ANC) offered no opposition to the proposal provided the height of the structure was limited to nineteen feet or less, that the statement in the Board's Order indicating that the ANC had been accorded the "great weight" to which it is entitled indicates that the Board meant to have approved the application. There were no response to the motion for reconsideration or rehearing.

Upon consideration of the motion, the evidence of record and its final order, the Board concludes that it has made no error in deciding the application. The Board notes

that the burden of proof necessary for the granting of an area variance is set forth in Section 3107.2, as follows:

"As set forth in D.C. Code §5-424(g)(3), where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code, §§5-413 to 5-432 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; Provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map."

The Board further notes that the applicants bear the burden of proof pursuant to Section 3324.2 which states as follows:

"In all cases before the Board the burden of proof shall rest with the appellant or applicant. If no evidence is presented in opposition to the case, the appellant or applicant shall not be relieved of this responsibility."


The Board concludes that the motion merely restates the testimony offered by the applicants at the Public Hearing or offers responses to the Board's findings. The fact that the Board did not reach the conclusion that the applicants had met their burden even in light of the ANC's position of "no opposition", does not make the Board's decision arbitrary capricious or unlawful. The Board further concludes that no materially different evidence has been submitted in support of the motion which was not presented at the time of the Public Hearing. The applicants are merely attempting to re-argue their case. Accordingly, the motion is hereby DENIED.

VOTE: 3-0 (Charles R. Norris, William F. McIntosh and Carrie L. Thornhill to deny; Paula L. Jewell not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

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ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: SEP 22 1989

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

14783order/BHS10

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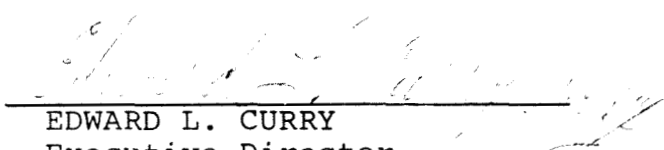
APPLICATION No. 14783

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order of the Board in the above numbered case, said Order dated SEP 22 1989, has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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Washington, D. C. 20003



EDWARD L. CURRY
Executive Director

DATE: SEP 22 1989